

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7667

Request of Central Vermont Public Service Corporation    )  
for approval of a new initiative under its Alternative       )  
Regulation Plan, concerning Dig Safe Costs Recovery       )

Order entered: 10/15/2010

**ORDER CLOSING DOCKET**

**I. HEARING OFFICER'S REPORT**

This proceeding concerns a Memorandum of Understanding (the "Dig Safe MOU") between Central Vermont Public Service Corporation ("CVPS" or the "Company") and the Vermont Department of Public Service (the "Department") that was filed with the Vermont Public Service Board (the "Board") for review and approval on January 8, 2010. The Dig Safe MOU requires CVPS to mark customer-owned underground facilities connected to the Company's electrical system whenever CVPS is contacted by Dig Safe System, Inc., with a "locate request." The Dig Safe MOU further provides for CVPS to recover the associated costs for responding to these "locate requests" as Dig Safe Initiative Costs pursuant to a proposed "New Initiatives Adder" in its Alternative Regulation Plan (the "CVPS Plan").<sup>1</sup>

On September 9, 2010, the Board opened this docket to consider the merits of approving the Dig Safe MOU. I was appointed to serve as the Hearing Officer in this matter.

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1. Prior to filing the Dig Safe MOU for review and approval by the Board, the Company filed a motion on October 30, 2009, seeking to amend the CVPS Plan to add a proposed "New Initiatives Adder" — a mechanism that would allow the Company to recover costs arising from new activities initiated after the start date of the CVPS Plan without counting these costs against the non-power-cost cap in the CVPS Plan. On February 2, 2010, a workshop was convened to discuss the proposed New Initiatives Adder. At that workshop, the Company was advised that consideration of the Dig Safe MOU would be deferred until the Board had ruled upon the Company's request to amend the CVPS Plan to add the proposed New Initiatives Adder. *See* Docket 7586, tr. 2/2/10 at 59.

On September 21, 2010, I convened a prehearing conference in this Docket, at which time the following persons entered appearances: Jeanne Burns, Esq., on behalf of CVPS; and Geoffrey A. Commons, Esq., on behalf of the Department.

During the prehearing conference, CVPS indicated that it was contemplating withdrawing its request for approval of the Dig Safe MOU in light of the Board's recent Order in Docket 7586 approving a revised version of the New Initiatives Adder.<sup>2</sup> The parties then agreed that they would file separate comments on whether to withdraw the MOU from the Board's consideration by October 5, 2010.

On October 4, 2010, CVPS filed a letter stating that the Dig Safe MOU should be withdrawn and this Docket closed.<sup>3</sup> The Company explained that the facilities-marking activities contemplated by the Dig Safe MOU "would not satisfy the criteria outlined by the Board in Docket 7586."<sup>4</sup> Specifically, CVPS had concluded that the projected costs of these activities could not be considered "material."

On October 5, 2010, the Department submitted comments stating that it supports CVPS's decision to seek leave to withdraw the Dig Safe MOU. The Department agrees that the costs associated with the Dig Safe MOU are "not material to the Company."<sup>5</sup>

I will treat CVPS's letter of October 4, 2010, as a request to voluntarily dismiss this docket. That request is supported by the Department, the only other party concerned. The voluntary dismissal of an action is governed by Rule 41 of the Vermont Rules of Civil Procedure, which is applicable to Board proceedings pursuant to Board Rule 2.105. In the absence of a stipulation of dismissal signed by all parties who have appeared in this proceeding, I will treat

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2. In that Order, the Board approved a version of the "New Initiatives Adder" that was different from the one originally proposed by CVPS. The "New Initiatives Adder" approved by the Board allows CVPS to seek an order approving cost recovery for new initiatives that arise after the start date of the Company's Alternative Regulation Plan upon a showing that (i) the risk associated with implementing the new initiative is of a nature that is different from the ordinary business risk that CVPS assumes in discharging its public service obligation, and (ii) the costs associated with implementing the new initiative are material. Docket 7586, Order of 9/3/10 at 10-11.

3. *Letter from Jeanne E. Burns, Esq., on behalf of CVPS, to Susan M. Hudson*, dated October 4, 2010, at 2.

4. *Id.* at 2.

5. *Letter from Geoffrey A. Commons, Esq., on behalf of the Department, to Susan M. Hudson*, dated October 5, 2010, at 1.

CVPS' s letter as a motion pursuant to V.R.C.P. 41(a)(2), which provides for voluntary dismissal by order of court. Because the Department, as the only other participant in this case, has indicated that it supports discontinuing this proceeding, I conclude that CVPS's request to voluntarily dismiss this action should be granted, without prejudice, and this docket should be closed.

This proposal for decision is not adverse to the interest of any party; it therefore need not be circulated to the parties pursuant to 3 V.S.A. § 811. This report is made to the Public Service Board pursuant to 30 V.S.A. § 8.

Dated at Montpelier, Vermont, this 13<sup>th</sup> day of October, 2010.

s/ June E. Tierney, Esq.  
June E. Tierney, Esq.  
Hearing Officer

## **II. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Report of the Hearing Officer is accepted.
2. CVPS's Request for Board Approval of the Dig Safe Initiative Costs Memorandum of Understanding is voluntarily dismissed, without prejudice, pursuant to Board Rule 2.105 and V.R.C.P. 41(a)(2).
3. This docket shall be closed.

Dated at Montpelier, Vermont, this 15<sup>th</sup> day of October, 2010.

<u>s/ James Volz</u>	)	
	)	
	)	
<u>s/ David C. Coen</u>	)	
	)	
	)	
<u>s/ John D. Burke</u>	)	

PUBLIC SERVICE  
  
BOARD  
  
OF VERMONT

OFFICE OF THE CLERK

FILED:      October 15, 2010

ATTEST: s/ Judith C. Whitney  
Deputy Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*